



CGHC010075522011



2026:CGHC:41565

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Reserved on 28-07-2026

Pronounced on 24-09-2026

CRA No. 764 of 2011

- Pratap Singh, aged 27 years, son of Shri Shivnath Gond, resident of village Dogariya, P.S. Pendra, District Bilaspur (CG).

... Appellant

versus

- State of Chhattisgarh through the Police Station Pendra, District Bilaspur (CG).

... Respondent

For Appellant.	:	Mr. Somnath Verma, Advocate.
For Respondent/State.	:	Ms. Sonia Kuldeep, Panel Lawyer

(Hon'ble Mr. Justice Narendra Kumar Vyas)

C A V Judgment

1. The appellant has preferred this Criminal Appeal under Section 374 (2) of the Code of Criminal Procedure, 1973 against the judgment of conviction and order of sentence dated 28-9-2011 passed by Additional Sessions Judge, District- Bilaspur (C.G.) in Sessions Trial No. 24 of 2011 wherein the said Court convicted the appellant and sentenced him as under:-

Conviction	Sentence
Under Section 304 Part 1 of IPC	R.I. for 05 years, with fine amount of Rs. 1,00,000/-, in default of

	payment of fine, to undergo additional R.I. for 3 months.
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2. The case of the prosecution, in brief, is that on 19-11-2011 Sarpanch Pradeep Kumar Shyam lodged merg intimation (Ex.P/2) before the Police Station alleging that on 19-11-2011 at 5.00 a.m. in the morning a quarrel took place between deceased Umrao Singh and Shivnadh and his son Prataap Singh and during course of altercation, they assaulted the deceased with bamboo sticks on his neck and chest as a result of which Umraj Gond died. On the basis of merg intimation, FIR bearing Crime No. 52 of 2016 was registered on 19-4-2011 before the Police Station Pendra, District Bilaspur (C.G.) for commission of offence punishable under Section 302/34 of IPC against the appellant Prataap Singh and co-accused ie., father of accused namely Shivnadh.
3. The prosecution after completing the due and necessary investigation, submitted the charge-sheet before the concerned Jurisdictional Magistrate First Class who, in turn, committed the case for trial. On the basis of the material contained in the charge-sheet, learned trial Court framed charges against the appellant for alleged commission of offence under Section 302 /34 of IPC. The accused having abjured guilt was subjected to trial.
4. In order to bring home the guilt of the appellant, the prosecution has examined as many as 8 witnesses to prove its case against the appellant ie., Surajwati Gond (PW/1), Pradeep Kumar Shyam (PW/2), Rohini Prasad (PW/3), Munni Bai (PW/4), Vinod Kumar Yadav (PW/5), Ganesh Prasad Choudhary (PW/6) and B.R. Nag,

Investigating Officer (PW/7) and Dr. J.S. Kanwar (PW/8) and exhibited documents from Ex.P/1 to Ex.P/22. Statement of the accused/appellant was also recorded under Section 313 of Cr.P.C., in which he denied all the incriminating circumstances appearing against him in the prosecution case and pleaded his innocence and false implication in this case. However, no witness was adduced by the appellant in his defence.

5. The learned trial Court, after appreciating the oral and documentary evidence though the charges under Section 302/34 of IPC has not been proved, but convicted the appellant and sentenced the under Section 304 Part 1 of IPC, but acquitted the other co-accused Shivrath from the charges under Section 304/34 of IPC. Being aggrieved with the judgment of conviction and order of sentence, the appellant has preferred this Criminal Appeal.
6. Learned counsel for the appellant would submit that the impugned judgment is contrary to the facts, law and circumstances of the case. The learned Trial Court failed to consider that the prosecution has failed to prove its case beyond reasonable doubt and learned trial Court has grossly erred in holding the appellant guilty under Section 304 Part 1 of IPC though the prosecution witnesses have turned hostile. Learned trial Court has not appreciated the prosecution evidence in accordance with the established principles of law relating to appreciation of evidence, the judgment of conviction and sentence of the trial Court is based on surmises and conjectures. He would further submit that statement of recovery recorded under Section 27 is not reliable as PW/2 Pradeep Kumar has admitted in his evidence

that the prosecution has not asked anything from accused Pratap Singh before him. Similarly, PW/5 Vinod Kumar Yadav has also stated that nothing has been asked by the prosecution before him.

7. He would further submit that memorandum statement does not support the case of the prosecution, therefore, conviction of the appellant is bad-in-law. He would further submit that memorandum statement of PW/3 Rohini Praasad is not substantive evidence for proving the case against the appellant, seizure of weapon has not been proved as the seizure witnesses have not supported the case of the prosecution and there is no eye-witness of the incident, therefore, it is incumbent upon the prosecution to prove the case by completing chain against the accused which the prosecution is unable to prove. He would further submit that no blood stain weapon of lathi was seized vide Ex.P/7 & P/8. Similarly, Dr. J.S. Kanwar who had examined the seized article has given opinion that vide medical report (Ex.P/22), there is no human blood found on the seized article lathi. Similarly, PW/8 Dr. J.S. Kanwar has stated that he has not seen any injury caused by lathi on the body of the deceased and even the prosecution has not produced medical report which goes against the prosecution. He would further submit that the prosecution is unable to prove its case beyond reasonable doubt and the statement of medical evidence is contrary to the statement of prosecution.
8. He would further submit that on the same set of evidence, learned trial Court has acquitted the other co-accused whereas the trial Court convicted the present appellant which is contrary to law and it is well settled position of law that on the same set of evidence one accused

cannot be convicted and another accused can be acquitted. He would further submit that there are contradictions and omissions in the statements of the prosecution witnesses, in absence of any cogent and clinching evidence adduced by the prosecution against the appellant conviction is bad-in-law and the prosecution is unable to prove the guilt of appellant beyond reasonable doubt, therefore, the judgment of conviction and order of sentence passed by the learned trial Court is liable to be set aside. To substantiate his arguments, he has relied upon the judgments of Hon'ble Supreme Court in the case of **Bhajju alias Karan Singh vs. State of MP, reported in 2012 (AIR SCW 1963, State of Tamil Nadu vs. Ponnuswamy, reported in AIR Online 2026 SC 387 para 98. Anand Jakkappa Pujari alias Gaddadar vs. State of Karnataka, reported in AIR Online 2026 SC 308, Chunni Bai vs. State of Chhattisgarh, reported in AIRonline 2025 SC 330 and The Forest Range Officer and others vs. P. Mohammed Ali and others, reported in AIR 1994 SC 120.**

9. Learned counsel for the appellant would submit that the manner in which learned trial Court has put question by applying Section 165 of the Evidence Act, the trial Court has intimidated the witness and adopted coercive steps against the witness only to find out the relevant facts and for recording of the conviction of the accused which is beyond the scope of Section 165 of the Evidence Act, as such, this evidence should not have been taken into consideration while convicting the appellant and would pray for allowing the appeal on this count.

10. Alternatively, he would submit that during trial the appellant remained in incarceration from 21-4-2011 till passing of the judgment on 29-9-2011 and this Court while granting bail to the appellant on 24-8-2012, thus he remained in incarceration for one year and three months and would pray for reducing the sentence to the period already undergone by the appellant as no minimum sentence has been prescribed under Section 304 Part 1 of the IPC.
11. On the other hand, learned counsel for the respondent/State supporting the impugned judgment would submit that the prosecution has proved its case beyond reasonable doubt and the witnesses have clearly supported the case of the prosecution and PW/8 Dr. J.S. Kanwar who had examined the deceased has also given opinion regarding the injury caused to the deceased by the appellant and learned Trial Court after minutely appreciating the oral and documentary evidence has rightly convicted and sentenced the appellant which cannot be said to be perversity or illegality. He would further submit that the submission of learned counsel for the appellant that on the same set of evidence present appellant has been convicted whereas the other co-accused has been acquitted, cannot be considered as the role played by both the accused has rightly been appreciated by the trial Court and thereafter the learned trial Court has convicted the present appellant and acquitted the other co-accused and would pray for dismissal of the appeal.
12. I have heard learned counsel for the parties and perused the material available on record including the impugned judgment.

13. From the submissions made by the parties, the point emerged for determination of this Court is;

“Whether the conviction of the appellant under Section 304 part 1 of IPC is legal and justified?.”

14. To appreciate this point, this Court has to appreciate the evidence brought on record by the prosecution.
15. Surajwati Gond (PW/1), who is wife of deceased Umraj Gond in her evidence before the trial Court has stated that when her husband was giving feed to the buffalo, at the same time Shivnath was passing from there to go to nature's call. Seeing him, her husband asked Shivnath why he assaulted him at Choura and at that time she was cleaning the utensils, then her husband abused Shivnadh and thereafter Shivnath went back to his house and called and brought his son Pratap Singh. Then both of them called her husband saying come here, come on the main road. At that time she had gone inside the house. Thereafter, she heard the sound of beating with lathis and after hearing the noise, she came out of the house and found her husband lying on the ground. Then she requested Shivnath and Pratap to leave her husband. Thereafter, they left the place of occurrence. She has further stated that her husband's throat was torn and there were injuries on his chest also. His arm and nose were also injured. She further stated that when she made hue and cry, then Munnibai and Krishna also came and saw Pratap and Shivnath beating her husband Umraj Singh and her husband died immediately. This witness in her cross examination has stated that when assault was started, she was hearing the sound of lathi and she

came out after keeping utensils in the house but denied the assault was completed when she returned back. She denied that she did not see the assault and voluntarily stated that seeing the assault, she requested Shivrath and his son Pratap to forgive her husband.

16. The record of the case would demonstrate that the learned trial Court has put certain questions to PW/1 exercising power under Section 165 of Evidence Act to prove the commission of offence as this witness has not deposed regarding commission of offence of assault has been committed by which of the accused and in response to the said questions, she has stated that she did not know whether her husband assaulted Shivrath and his son Pratap by sticks and also denied that Prataap asked her husband why he abused his father and her husband also assaulted Pratap. She has voluntarily stated that the accused Pratap assaulted on the neck of her husband, as such her husband fell down. She denied that only Pratap Singh assaulted her husband 3-4 times, by lathi. She has also admitted that she has given all the information to Kotwar's son and also admitted that at the time of assault, sons of Sarpanch and Kotwar were not there.
17. Pradeep Kumar Shyam (PW/2) who was the seizure witness had stated in his evidence that no enquiry was done by the Police from accused Prataap, but he has admitted his signature in Ex.P/6, P/7 & P/8 which is a memorandum, property seizure memo and stated that the Police personnel have not seized any article from Shivrath and Pratap Singh before him. Prosecution has declared him hostile. In the cross examination also he has denied that the Police personnel asked Pratap Singh nothing before him. He has also denied that

accused Pratap Singh had given lathis to Police and both lathis were seized before him. This witness was cross examined by the defence wherein he has admitted that he has lodged the FIR as per the facts informed by Surajbati and also admitted that if deceased Umraj would have not assaulted Shivnath then the incident may not be happened.

18. Rohini Prasad (PW/3) has denied the seizure and he turned hostile and in cross examination also he denied that Surajwati Gond told him that both the accused have assaulted her husband. He also denied that at the time of recording of his statement he has not stated that due to assault made by the accused, deceased succumbed to death and if it was written in Ex. P/9 that he did not know.
19. Munni Bai (PW/4) has not supported the case of the prosecution and she was again cross examined wherein she again reiterated that she saw both the accused assaulting the deceased. She voluntarily stated that at that time she was taking sleep. PW/5 Vinod Kumar Yadav has also not supported the case of the prosecution and stated that the Police have enquired from Shivnadh and no enquiry was made from appellant Pratap Singh and Pratap Singh has not stated anything to Police, but he admitted his signature in Ex.P/6. He has also stated in his evidence that he has not read the papers before signing it and also stated in the cross examination that the deceased Umraj Gond was a person of habitual quarreler with local people.
20. Ganesh Prasad Choudhary (PW/6) who has also not supported the case of prosecution turned hostile. B.R. Naga (PW/7) who is Investigating Officer has supported the case of prosecution. In the

cross examination he has stated that Pratap Singh assaulted the deceased with lathi 3-4 times.

21. Prosecution has also examined PW/8 Dr. J.S. Kanwar who in his evidence has admitted that he has not matched the injury caused on the body of the deceased with lathi and has also not seen any injury which may be caused by lathi. The accused has not examined any witness to support his case but he has taken plea of false implication and exhibited the statement of Surajwati (Ex.D/1).
22. From appreciation of evidence, it is quite vivid that PW/1 Surajwati Gond who according to the case of prosecution, is a star witness has stated in the examination-in-chief that at the time of incident she was in the house and when she heard the sound of lathi, then she came out from the house and at that time her husband fell down which clearly establishes that she has not seen that who has actually assaulted the deceased and in paragraph 3 of her evidence she has stated that her husband was assaulted by Shivnadh and Pratap Singh which was seen by her. From the evidence of PW/1, it is quite vivid that this witness has not stated that the appellant has assaulted the deceased nor in the cross-examination any fact regarding Learned trial court, but the trial Court with an object to get the answer to find out relevant facts has put the questions which are beyond the power conferred under Section 165 of the Evidence Act. Section 165 of the Indian Evidence Act, 1872 reads as under:

"165. Judge's power to put questions or order production.

The judge may, in order to discover or to obtain proper proof of relevant facts, ask any question he pleases, in any form, at any time, of any witness, or of the parties, about any fact

relevant or irrelevant ; and may order the production of any document or thing ; and neither the parties nor their agents shall be entitled to make any objection to any such question or order, nor, without the leave of the Court, to cross-examine any witness upon any answer given in reply to any question:

Provided that the judgment must be based upon facts declared by this Act to be relevant and duly proved

Provided also that this section shall not authorize any Judge to compel any witness to answer any question or to produce any document which such witness would be entitled to refuse to answer or produce under sections 121 to 131, both inclusive, if the question were asked or documents were called for by the adverse party; nor shall the Judge ask any question which it would be improper for any other person to ask under section 148 or 149; nor shall he dispense with primary evidence of any document , except in the cases hereinbefore excepted.

23. From perusal of the aforesaid provisions, it is quite vivid that Section 165 of the Evidence Act confers vast and unrestricted powers on the trial Court to put any question he pleases in any form at any time, to any witness, or to the parties, about any fact, relevant or irrelevant in order to discover relevant facts.
24. From perusal of the evidence brought on record, it is quite vivid that PW/1 Surajwati Gond who was wife of the deceased in examination in chief has not stated anything about the involvement of the appellant with the crime in question and even in the cross examination she has admitted that the assault was started when she was in her house and after hearing the sound, she came out from the house. She has voluntarily stated that seeing the assault she requested both the accused to leave her husband, but nowhere stated the name of the present appellant, therefore, learned trial Court in the garb of Section 165 of the Indian Evidence Act, cannot and should not ask the questions which may compel any witness to

any question. As such, the questions was put by the trial Court to the witness. The evidence which has been recorded as per Section 165 of the Evidence Act would clearly demonstrate that PW/1 has again denied that appellant has assaulted her husband, but voluntarily stated that Pratap assaulted her husband by stick on the neck, therefore, her husband fell down which was not supported by any of the prosecution witness. Thus, the manner in which the question has been put by the learned trial Court it will amount to intimidating the witness or to confuse or coerce the witness. Thus, this question and the answer are not sufficient to convict the appellant for the offence for which he has been charged. Section 165 of the Evidence Act and the Court's power to put any question to the witness has been examined by the Hon'ble Supreme Court in case of **Ram Chander vs. State of Haryana, reported in 1981 (3) SCC 191** in para 3 which reads as under.

"3 With such wide powers, the Court must actively participate in the trial to elicit the truth and to protect the weak and the innocent. It must, of course, not assume the role of a prosecutor in putting questions. The functions of the counsel, particularly those of the Public Prosecutor, are not to be usurped by the judge, by descending into the arena, as it were. Any questions put by the judge must be so as not to frighten, coerce, confuse or intimidate the witnesses. The danger inherent in a judge adopting a much too stern an attitude towards witnesses has been explained by Lord Justice Birkett:

"People accustomed to the procedure of the Court are likely to be over-awed or frightened, or confused, or distressed when under the ordeal of prolonged questioning from the presiding Judge. Moreover, when the questioning takes on a sarcastic or ironic tone as it is apt to do, or when it takes on a hostile note as is sometimes almost inevitable, the danger is not only that witnesses will be unable to present the evidence they may wish, but the parties may begin to think, quite wrongly it may be, that the judge is not holding the scales of justice quite eventually"(1) In Jones v. National

Coal Board Lord Justice Denning observed:

"The Judge's part in all this is to hearken to the evidence, only himself asking questions of witnesses when it is necessary to clear up any point that has been over looked or left obscure; to see that the advocates behave themselves seemly and keep to the rules laid down by law; to exclude irrelevancies and discourage repetition; to make sure by wise intervention that he follows the points that the advocates are making and can assess their worth; and at the end to make up his mind where the truth lies. If he goes beyond this, he drops the mantle of the judge and assumes the role of an advocate; and the change does not become him well."

We may go further than Lord Denning and say that it is the duty of a judge to discover the truth and for that purpose he may "ask any question, in any form, at any time, of any witness, or of the parties, about any fact, relevant or irrelevant" (Sec. 165 Evidence Act). But this he must do, without unduly trespassing upon the functions of the public prosecutor and the defence counsel, without any hint of partisanship and without appearing to frighten or bully witnesses. He must take the prosecution and the defence with him. The Court, the prosecution and the defence must work as a team whose goal is justice, a team whose captain is the judge. The judge, 'like the conductor of a choir, must, by force of personality, induce his team to work in harmony; subdue the raucous, encourage the timid, conspire with the young, flatter and old."

25. The Hon'ble Supreme Court in the case of **State of Rajasthan vs. ANI, reported in (1997) 6 SCC 162**, cautioned that judicial intervention must not appear to fill up lacunae in the prosecution case. These principles apply in the present facts also. Although a Judge may legally ask leading questions to the witness under Section 165, such power must be exercised only for clarification and to obtain proper proof of relevant facts. The Judge cannot suggest answers, introduce material facts not already spoken to by the witness, or supply essential ingredients of the offence-such as assault made by the accused if the witness herself has not deposed to them. Nor can the Judge neutralize contradictions brought out in

cross-examination or repair weaknesses in the prosecution case.

Any such intervention may give rise to an apprehension of bias and may affect the fairness of the trial, which is an integral component of Article 21 of the Constitution.

26. In essence, the role of the trial Judge in recording the evidence of a witness is to strike a careful balance between sensitivity and neutrality. The Court must protect the dignity of the witness and ensure that her testimony is clearly and properly recorded, but it must not abandon its impartial position or assume the mantle of the prosecuting agency. The power under Section 165 of Indian Evidence Act is meant to advance the cause of justice and discovery of truth, not to tilt the balance in favour of either party. In the present case the Trial court has put leading question as to the directly commission of alleged offences by the accused person which has prompted the witness to say affirmatively, however when the same question was put-forth the witness has answered that the accused has assaulted the deceased, which is against the jurisprudence of role of judge during trial of cases.
27. The Hon'ble Supreme Court in case of **Jamatraj Kewalji Govani vs. State of Maharashtra, reported in 1967 SCC Online 19** has held in para 14 which reads as under.

"14. It would appear that in our criminal jurisdiction, statutory law confers a power in absolute terms to be exercised at any stage of the trial to summon a witness or examine one present in court or to recall a witness already examined, and makes this the duty and, obligation of the Court provided the just decision of the case demands it. In other words, where the court exercises the power under the second part, the inquiry cannot be whether the accused has brought

anything suddenly or unexpectedly but whether the court is right in thinking that the new evidence is needed by it for a just decision of the case. If the court has acted without the requirements of a just decision, the action is open to criticism but if the court's action is supportable as being in aid of a just decision the action cannot be regarded as exceeding the jurisdiction."

28. Considering the fact that duty of a judge was to discover the truth and for that purpose he may "ask any question, in any form, at any time, of any witness, or of the parties, about any fact, relevant or irrelevant, but this he must do, without unduly trespassing upon the functions of the public prosecutor and the defence counsel, without any hint of partisanship and without appearing to frighten or bully witnesses. He must take the prosecution and the defence with him, whereas there is no evidence brought on record by the prosecution. As the witness has not supported the case of the prosecution, as such conviction of the appellant on the question put-forth by the trial Court under Section 165 of the Evidence Act cannot be sustainable. Therefore, the order of conviction of the appellant is liable to be set aside and the accused deserves to be acquitted from the charges by granting benefit of doubt as the prosecution is unable to prove the case against the appellant beyond reasonable doubt and also on the same set of evidence, learned trial Court has acquitted the other co-accused.
29. Now this Court is examining the further submission of the learned counsel for the appellant that on the same set of evidence once the another accused has been acquitted, whether conviction of the appellant on the same set of evidence is legal and justified. It is well settled position of law that on the same set evidence, if one co-

accused has been acquitted then another accused cannot be convicted has been examined by the Hon'ble Supreme Court in the case of **Javed Shaukat Ali Qureshi vs. State of Gujarat, reported in (2023) 9 SCC 164** has held in para 15 which reads as under.

"5. When there is similar or identical evidence of eyewitnesses against two accused by ascribing them the same or similar role, the Court cannot convict one accused and acquit the other. In such a case, the cases of both the accused will be governed by the principle of parity. This principle means that the Criminal Court should decide like cases alike, and in such cases, the Court cannot make a distinction between the two accused, which will amount to discrimination".

30. Considering the fact that the on the same set of evidence the learned trial Court has acquitted another accused and prosecution is unable to place on record any cogent evidence with regard to involvement of the present appellant and only on question put by the learned trial Court while exercising power under Section 165 of the Indian Evidence Act which intends to fulfill the lacuna of the prosecution case is beyond the Section 165 of the Evidence Act and no other evidence is brought on record against the appellant for sustaining the conviction against the appellant therefore, this Court of the view that the appellant deserves to be granted benefit of doubt as prosecution is unable to prove the case against the appellant beyond reasonable doubt.

ORDER

- (i) The appeal is allowed;
- (ii) The judgment of conviction and order on sentence dated 28-9-2011 passed in Sessions Trial No. 24/2011 by the Additional Sessions

Judge, Pendra Road, District Bilaspur convicting the appellant under Section 304 Part 1 of IPC is hereby set aside.

(iii) The appellant is acquitted of the offence punishable under Section 304 Part-1 of IPC;

(iv) The appellant is reported to be on bail and his bail bonds shall continue in view of Section 481 of BNSS.

(v) Registry to send the copy of the judgment along with trial Court records to the concerned Court.

Sd/-

(Narendra Kumar Vyas)

JUDGE

Raju

Head Note:

“The trial Court power conferred under Section 165 of the Indian Evidence Act, 1872 cannot put leading question as to the directly commission of alleged offence by the accused person which may prompt witness to say affirmatively.”

मुख्य बिंदु:

“भारतीय साक्ष्य अधिनियम, 1872 की धारा 165 के तहत अधीनस्थ न्यायालय को प्रदत्त शक्ति का उपयोग आरोपी व्यक्ति द्वारा कथित अपराध को सीधे तौर पर अंजाम देने के संबंध में ऐसा सूचक प्रश्न पूछने के लिए नहीं किया जा सकता, जो गवाह को सकारात्मक हाँ में उत्तर देने के लिए प्रेरित या उकसा सकता हो।”